

APPEAL NO. 042558  
FILED DECEMBER 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing (CCH) held on September 10, 2004, the hearing officer resolved the disputed issues by determining that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the third quarter and had good cause for failing to attend the required medical examination (RME) with Dr. G on August 1, 2004. The claimant appeals, arguing that the hearing officer erred in finding that the claimant was not entitled to SIBs for the third quarter. The respondent (carrier herein) responds that the evidence supports the decision of the hearing officer. Neither party appeals the hearing officer's finding that the claimant had good cause not to attend the RME with Dr. G on August 1, 2004.

DECISION

A timely request for review not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The records of the Commission reflect that the decision of the hearing officer was distributed on September 17, 2004, under a cover letter of the same date. The claimant states in her request for review that she received the decision of the hearing officer on September 22, 2004. The claimant's appeal needed to be mailed no later than October 13, 2004, the 15th day from the date of receipt. The claimant's request for review was sent to the Commission both by U.S. mail and by facsimile transmission fax. The fax is time stamped at 5:40 p.m. on October 13, 2004. Since the fax was received after 5:00 p.m. it is stamped as filed with the Commission on October 14, 2004. The reason for this is explained in our decision in Texas Workers' Compensation Commission Appeal No. 022115, decided September 26, 2002, where we stated as follows:

Rule 102.3(e) states that “[u]nless otherwise specified by rule, any written or telephonic communications required to be filed by specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing.” Rule 102.3(d) provides that “[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day.” Finally, Rule 102.3(c) establishes that “[n]ormal business hours in the Texas workers’ compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission’s El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time.”

Having been filed on October 14, 2004, the copy of the appeal sent by fax is untimely to invoke our jurisdiction. This is also true of the copy of appeal sent by U.S. mail. The envelope in which the appeal is transmitted bears a postage meter date stamp of October 13, 2004, but also bears a United States postmark of October 14, 2004. We have repeatedly held that when there is a date discrepancy between a postal meter date stamp and the postmark of the United States Postal Service that the United States Postal Service postmark controls. Texas Workers’ Compensation Commission Appeal No. 981793, decided September 15, 1998 *and cases cited therein*.

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final. Section 410.169.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge